

STATE OF NEW YORK: COUNTY OF SUFFOLK
SUFFOLK COUNTY BOARD OF ETHICS

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In the Matter of the Inquiry of

ADVISORY OPINION
No. AO-2013-3

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NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL. Applications requesting its modification, clarification, or withdrawal must be made in accordance with Suffolk County Board of Ethics rules unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Nothing shall prohibit the Suffolk County Board of Ethics, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time.

ADVISORY OPINION REQUEST

1. Can an employee of the Suffolk County [REDACTED] solicit Suffolk County business contracts for private interest?

GOVERNING AUTHORITY

2. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Chapter 77, Sections 77-2(B) and Sections 77-3(H).

PROCEDURAL HISTORY

3. This Advisory Opinion was requested 2/3/2013.
4. Fact finding was concluded on 3/4/2013.
5. The Board deliberated on this Advisory Opinion request on 3/11/2013 , 3/27/2013, and 4/10/2013.

INFORMATION PRESENTED TO THE BOARD

6. The Requestor is an employee of the [REDACTED]. (*Requestor's Exhibits# 1 and 2*).
7. The Requestor is the sole proprietor of an S-Corporation (*Requestor's Exhibits# 1 and 2*).
8. The Requestor is disclosing potential contracts between this private interest and Suffolk County (*Requestor's Exhibits# 1 and 2*).

OPINION AND ANALYSIS

10. In considering this inquiry, the Board employed the following three-step analysis to determine whether a prohibited conflict of interest would exist:

- a) Does the requestor have standing to obtain an Advisory Opinion from the Suffolk County Board of Ethics;
- b) Is the requestor seeking advice on proposed future conduct;
- c) Whether potential sales contracts with Suffolk County are a conflict of interest to his employment status as a [REDACTED] with the Suffolk County [REDACTED].

STANDING

11. The Board determined that standing exists for this Advisory Opinion request due to the requestor's position as a public servant employed by the Suffolk County [REDACTED] which mandates him to comply with the Suffolk County Ethics Laws¹ (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1, NYC COIB Advisory Opinion 2009-4*).

PROPOSED FUTURE CONDUCT

12. The Law States in Pertinent Part²:

§ A30-3(B). ADVISORY OPINIONS:

Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The Board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion.

13. The Board determined that as no contracts were effectuated between the Requestor's private company and Suffolk County at the time of the Advisory Opinion request, that the request is regarding proposed future conduct and is within the Board's jurisdiction.

POTENTIAL CONFLICTS OF INTEREST

14. The Law States in pertinent part:

§ 77-2. PROHIBITED INTERESTS IN FIRMS DOING BUSINESS WITH THE COUNTY.

B. *No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County.*

15. The Board, under § 77-2(B) finds that as the Requestor is a County employee, he is precluded from having an ownership interest in a firm that is engaged in business dealings with the County.

16. In furtherance, the Law States in pertinent part:

§ 77-3. PROHIBITED CONDUCT:

H. *No public servant shall, for compensation, represent private interests before any County agency or appear directly or indirectly on behalf of private interests in matters involving the County. For a public servant who is not a County employee, this prohibition shall apply only to the agency served by the public servant.*

17. As applied to § 77-3(H) the Board finds the Requestor cannot, for compensation, represent private interests before any County agency or appear directly or indirectly on behalf of private interests in matters involving the County.

CONCLUSION

18. As set forth above, the Board finds that pursuant to § 77-2(B) and §77-3(H), that the Requestor cannot enter into any contracts with Suffolk County for private interests.

19. Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the requester shall have 15 business days from the time this Advisory Opinion has been rendered (excluding Saturday, Sunday, or a legal holiday) to file a request for reconsideration supported by new material facts submitted to the Board.

20. The forgoing is the opinion of the Board.

Dated: Yaphank, New York
04/15/2013

Robin L. Long, Esq. - Chair

¹ N.Y. Gen Mun. Law § 810 (6). Additional definitions; Suffolk County §77-1 definitions

² N.Y. Gen Mun. Law § 800: Article 18 of the New York General Municipal Law establishes standards of ethical conduct that are mandatory for officers and employees within the State of New York.